

Introduced by Senator Morrow

January 17, 2006

An act to amend Section 831.7 of the Government Code, and to repeal and add Section 115800 of the Health and Safety Code, relating to recreational activities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1179, as introduced, Morrow. Recreational activities: skateboarding.

Under existing law, public entities and public employees are generally not liable to any person who participates in various hazardous recreational activities, including bicycle racing or jumping and mountain bicycling.

This bill would add skateboarding to that provision of law.

Existing law, effective until January 1, 2008, provides that skateboarding at a public skateboard park is a hazardous recreational activity if specified conditions are satisfied. That law, also in effect until January 1, 2008, requires local public agencies to maintain a record of all known or reported injuries incurred by skateboarders in a public skateboard park or facility, and other information regarding these incidents, as specified, and requires that copies of those records be filed annually with the Judicial Council, which is required to report to the Legislature on these incidents and any claims arising therefrom. Existing law also prohibits the operator of a skateboard park to permit a person to ride a skateboard in the park unless the person is wearing a helmet, elbow pads, and knee pads.

This bill would repeal those provisions. The bill would instead grant local public agencies, as defined, that own or operate skateboard parks the authority to determine if helmets, knee pads, and elbow pads are an appropriate requirement for use by persons at skateboard parks, or

specific areas thereof, which are within the local public agency's jurisdiction.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 831.7 of the Government Code is
2 amended to read:

3 831.7. (a) Neither a public entity nor a public employee is
4 liable to any person who participates in a hazardous recreational
5 activity, including any person who assists the participant, or to
6 any spectator who knew or reasonably should have known that
7 the hazardous recreational activity created a substantial risk of
8 injury to himself or herself and was voluntarily in the place of
9 risk, or having the ability to do so failed to leave, for any damage
10 or injury to property or persons arising out of that hazardous
11 recreational activity.

12 (b) As used in this section, "hazardous recreational activity"
13 means a recreational activity conducted on property of a public
14 entity which creates a substantial (as distinguished from a minor,
15 trivial, or insignificant) risk of injury to a participant or a
16 spectator.

17 "Hazardous recreational activity" also means:

18 (1) Water contact activities, except diving, in places where or
19 at a time when lifeguards are not provided and reasonable
20 warning thereof has been given or the injured party should
21 reasonably have known that there was no lifeguard provided at
22 the time.

23 (2) Any form of diving into water from other than a diving
24 board or diving platform, or at any place or from any structure
25 where diving is prohibited and reasonable warning thereof has
26 been given.

27 (3) Animal riding, including equestrian competition, archery,
28 bicycle racing or jumping, mountain bicycling, boating,
29 cross-country and downhill skiing, hang gliding, kayaking,
30 motorized vehicle racing, off-road motorcycling or four-wheel
31 driving of any kind, orienteering, pistol and rifle shooting, rock
32 climbing, rocketeering, rodeo, *skateboarding*, spelunking, sky
33 diving, sport parachuting, paragliding, body contact sports (i.e.,

1 sports in which it is reasonably foreseeable that there will be
2 rough bodily contact with one or more participants), surfing,
3 trampolining, tree climbing, tree rope swinging, waterskiing,
4 white water rafting, and windsurfing. For the purposes of this
5 subdivision, “mountain bicycling” does not include riding a
6 bicycle on paved pathways, roadways, or sidewalks.

7 (c) Notwithstanding the provisions of subdivision (a), this
8 section does not limit liability which would otherwise exist for
9 any of the following:

10 (1) Failure of the public entity or employee to guard or warn
11 of a known dangerous condition or of another hazardous
12 recreational activity known to the public entity or employee that
13 is not reasonably assumed by the participant as inherently a part
14 of the hazardous recreational activity out of which the damage or
15 injury arose.

16 (2) Damage or injury suffered in any case where permission to
17 participate in the hazardous recreational activity was granted for
18 a specific fee. For the purpose of this paragraph, a “specific fee”
19 does not include a fee or consideration charged for a general
20 purpose such as a general park admission charge, a vehicle entry
21 or parking fee, or an administrative or group use application or
22 permit fee, as distinguished from a specific fee charged for
23 participation in the specific hazardous recreational activity out of
24 which the damage or injury arose.

25 (3) Injury suffered to the extent proximately caused by the
26 negligent failure of the public entity or public employee to
27 properly construct or maintain in good repair any structure,
28 recreational equipment or machinery, or substantial work of
29 improvement utilized in the hazardous recreational activity out of
30 which the damage or injury arose.

31 (4) Damage or injury suffered in any case where the public
32 entity or employee recklessly or with gross negligence promoted
33 the participation in or observance of a hazardous recreational
34 activity. For purposes of this paragraph, promotional literature or
35 a public announcement or advertisement which merely describes
36 the available facilities and services on the property does not in
37 itself constitute a reckless or grossly negligent promotion.

38 (5) An act of gross negligence by a public entity or a public
39 employee which is the proximate cause of the injury.

1 Nothing in this subdivision creates a duty of care or basis of
2 liability for personal injury or for damage to personal property.

3 (d) Nothing in this section shall limit the liability of an
4 independent concessionaire, or any person or organization other
5 than the public entity, whether or not the person or organization
6 has a contractual relationship with the public entity to use the
7 public property, for injuries or damages suffered in any case as a
8 result of the operation of a hazardous recreational activity on
9 public property by the concessionaire, person, or organization.

10 SEC. 2. Section 115800 of the Health and Safety Code, as
11 amended by Section 1 of Chapter 409 of the Statutes of 2002, is
12 repealed.

13 ~~115800. (a) No operator of a skateboard park shall permit~~
14 ~~any person to ride a skateboard therein, unless that person is~~
15 ~~wearing a helmet, elbow pads, and knee pads.~~

16 ~~(b) With respect to any facility, owned or operated by a local~~
17 ~~public agency, that is designed and maintained for the purpose of~~
18 ~~recreational skateboard use, and that is not supervised on a~~
19 ~~regular basis, the requirements of subdivision (a) may be~~
20 ~~satisfied by compliance with the following:~~

21 ~~(1) Adoption by the local public agency of an ordinance~~
22 ~~requiring any person riding a skateboard at the facility to wear a~~
23 ~~helmet, elbow pads, and knee pads.~~

24 ~~(2) The posting of signs at the facility affording reasonable~~
25 ~~notice that any person riding a skateboard in the facility must~~
26 ~~wear a helmet, elbow pads, and knee pads, and that any person~~
27 ~~failing to do so will be subject to citation under the ordinance~~
28 ~~required by paragraph (1).~~

29 ~~(e) “Local public agency” for purposes of this section~~
30 ~~includes, but is not limited to, a city, county, or city and county.~~

31 ~~(d) (1) Skateboarding at any facility or park owned or~~
32 ~~operated by a public entity as a public skateboard park, as~~
33 ~~provided in paragraph (3), shall be deemed a hazardous~~
34 ~~recreational activity within the meaning of Section 831.7 of the~~
35 ~~Government Code if all of the following conditions are met:~~

36 ~~(A) The person skateboarding is 14 years of age or older.~~

37 ~~(B) The skateboarding activity that caused the injury was~~
38 ~~stunt, trick, or luge skateboarding.~~

39 ~~(C) The skateboard park is on public property that complies~~
40 ~~with subdivision (a) or (b).~~

~~(2) In addition to the provisions of subdivision (c) of Section 831.7 of the Government Code, nothing in this section is intended to limit the liability of a public entity with respect to any other duty imposed pursuant to existing law, including the duty to protect against dangerous conditions of public property pursuant to Chapter 2 (commencing with Section 830) of Part 2 of Division 3.6 of Title 1 of the Government Code. However, nothing in this section is intended to abrogate or limit any other legal rights, defenses, or immunities that may otherwise be available at law.~~

~~(3) For public skateboard parks that were constructed on or before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2001. For public skateboard parks that are constructed after January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2008. For purposes of this subdivision, any skateboard facility that is a movable facility shall be deemed constructed on the first date it is initially made available for use at any location by the local public agency.~~

~~(4) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by a skateboarder in a public skateboard park or facility. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2007, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed, by persons injured while skateboarding in public skateboard parks or facilities.~~

~~(5) This subdivision shall not apply on or after January 1, 2001, to public skateboard parks that were constructed on or before January 1, 1998, but shall continue to apply to public skateboard parks that are constructed after January 1, 1998.~~

~~(e) This section shall remain in effect until January 1, 2008, and as of that date is repealed, unless a later enacted statute, enacted before January 1, 2008, deletes or extends that date.~~

1 SEC. 3. Section 115800 of the Health and Safety Code, as
2 amended by Section 2 of Chapter 409 of the Statutes of 2002, is
3 repealed.

4 ~~115800. (a) No operator of a skateboard park shall permit~~
5 ~~any person to ride a skateboard therein, unless that person is~~
6 ~~wearing a helmet, elbow pads, and knee pads.~~

7 ~~(b) With respect to any facility, owned or operated by a local~~
8 ~~public agency, that is designed and maintained for the purpose of~~
9 ~~recreational skateboard use, and that is not supervised on a~~
10 ~~regular basis, the requirements of subdivision (a) may be~~
11 ~~satisfied by compliance with the following:~~

12 ~~(1) Adoption by the local public agency of an ordinance~~
13 ~~requiring any person riding a skateboard at the facility to wear a~~
14 ~~helmet, elbow pads, and knee pads.~~

15 ~~(2) The posting of signs at the facility affording reasonable~~
16 ~~notice that any person riding a skateboard in the facility must~~
17 ~~wear a helmet, elbow pads, and knee pads, and that any person~~
18 ~~failing to do so will be subject to citation under the ordinance~~
19 ~~required by paragraph (1).~~

20 ~~(c) “Local public agency” for purposes of this section~~
21 ~~includes, but is not limited to, a city, county, or city and county.~~

22 ~~(d) This section shall become operative on January 1, 2008.~~

23 SEC. 4. Section 115800 is added to the Health and Safety
24 Code, to read:

25 115800. (a) A local public agency that owns or operates
26 skateboard parks shall have the authority to determine if helmets,
27 knee pads, and elbow pads are an appropriate requirement for use
28 by persons at skateboard parks, or specific areas thereof, which
29 are within the local public agency’s jurisdiction.

30 (b) For purposes of this section, “local public agency”
31 includes, but is not limited to, a city, county, city and county, and
32 special district.